

MARK D. FOWLER, Bar No. 124235
mark.fowler@dlapiper.com
DAVID ALBERTI, Bar No. 220625
david.alberti@dlapiper.com
CHRISTINE K. CORBETT, Bar No. 209128
christine.corbett@dlapiper.com
YAKOV M. ZOLOTOREV, Bar No. 224260
yakov.zolotorev@dlapiper.com
CARRIE L. WILLIAMSON, Bar No. 230873
carrie.williamson@dlapiper.com

DLA PIPER US LLP
2000 University Avenue
East Palo Alto, CA 94303-2214
Tel: 650.833.2000
Fax: 650.833.2001

Attorneys for Defendant-Counterclaim Plaintiff,
Sun Microsystems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.

Plaintiff-Counterclaim Defendant,

v.

SUN MICROSYSTEMS, INC.

Defendant-Counterclaim Plaintiff.

CASE NO. C-07-06053-EDL

**JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT**

Claim Construction Hearing:
Date: August 27, 2008
Time: 9:00 a.m.

Pursuant to Northern District of California Patent Local Rule 4-3, NetApp, Inc. (formerly Network Appliance, Inc.) and Sun Microsystems, Inc. ("Sun") jointly submit this Joint Claim Construction and Prehearing Statement.

I. JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Patent Local Rule 4-2(c), the parties met and conferred regarding the submission of this Joint Claim Construction and Prehearing Statement. The parties identified a total of 115 terms for construction and 18 terms governed by 35 U.S.C. § 112(6).¹ The parties

¹ With respect to one term in the '292 patent, "marking said blocks of said non-volatile storage means identified in

attempted to negotiate a methodology for streamlining claim construction, but were unable to reach agreement.² The parties will set forth their respective proposals, and the bases for their proposals, in the Supplemental Joint Case Management Statement, which is due to be filed on May 27.

II. EXHIBITS ACCOMPANYING THIS SUBMISSION

This Statement includes the following Exhibits:

Exhibit A – Proposed Constructions and Supporting Evidence for the ’292 Patent

Exhibit B – Proposed Constructions and Supporting Evidence for the ’211 Patent

Exhibit C – Proposed Constructions and Supporting Evidence for the ’352 Patent

Exhibit D – Proposed Constructions and Supporting Evidence for the ’715 Patent

Exhibit E – Proposed Constructions and Supporting Evidence for the ’964 Patent

Exhibit F – Proposed Constructions and Supporting Evidence for the ’486 Patent

Exhibit G – Proposed Constructions and Supporting Evidence for the ’662 Patent

Exhibit H – Proposed Constructions and Supporting Evidence for the ’106 Patent

Exhibit I – Proposed Constructions and Supporting Evidence for the ’954 Patent

Exhibit J – Proposed Constructions and Supporting Evidence for the ’857 Patent

Exhibit K – Proposed Constructions and Supporting Evidence for the ’185 Patent

Exhibit L – Proposed Constructions and Supporting Evidence for the ’261 Patent

Exhibit M – Proposed Constructions and Supporting Evidence for the ’639 Patent

Exhibit N – Proposed Constructions and Supporting Evidence for the ’667 Patent

said meta-data as comprising a respective read-only copy of said file system,” NetApp identified this additional term on May 23, 2008. In an effort to minimize disputes, the parties agreed to jointly submit a Supplemental Joint Claim Construction Statement identifying their respective proposed constructions and supporting evidence as to the additional term by May 30. Consequently, the parties have not included that term in the exhibits to this Statement.

² Sun notes that NetApp submitted modified constructions for at least 45 terms a few minutes to a few hours prior to the midnight filing deadline (and even after the midnight filing deadline). Sun did not have an opportunity to review, analyze or meet-and-confer with NetApp regarding these new constructions. Moreover, as of midnight (the deadline for submitting this joint statement), NetApp had not yet provided Sun with eight charts for Sun’s review. Sun has had little to no opportunity to review the charts as filed with the Court. As such, Sun reserves the right to modify its proposed constructions and supporting evidence once it has had an opportunity to review these charts. NetApp notes that its modifications are intended to promote agreement, in part by narrowing the disputes between the parties, and follow up on the parties’ prior discussions and Sun’s modified constructions, several of which Sun provided as the joint charts were being prepared on May 23. NetApp believes that the parties should attempt to resolve their disputes through continued discussions as the claim construction process proceeds.

Exhibit O – Proposed Constructions and Supporting Evidence for the '343 Patent

Exhibit P – Proposed Constructions and Supporting Evidence for the '984 Patent

Exhibit Q – Proposed Constructions and Supporting Evidence for the '630 Patent

Exhibit R – Proposed Constructions and Supporting Evidence for the '095 Patent

Exhibit S – Proposed Constructions and Supporting Evidence for the '303 Patent

III. CLAIM CONSTRUCTION HEARING AND BRIEFING SCHEDULE

The Court's February 12, 2008 Case Management Scheduling Order set the following schedule for claim construction:

Further Case Management Conference: June 3, 2008 at 2:00 p.m.

Opening Briefs: July 7, 2008;

Responsive Brief: July 21, 2008;

Reply Brief: August 1, 2008;

Tutorial: August 4, 2008, at 9:00 a.m.

Claim Construction Hearing: August 27, 2008, at 9:00 a.m.

Once the parties receive guidance from the Court regarding how to move forward with the claim construction process, the parties will submit a statement of the anticipated length of the claim construction hearing.

IV. WITNESSES

Once the parties receive guidance from the Court regarding how to move forward with the claim construction process, the parties will submit a statement regarding whether they anticipate that witnesses will be called during the claim construction hearing.

1 Dated: May 23, 2008

2 DLA PIPER US LLP

3 By /s/ Christine K. Corbett

4 MARK D. FOWLER
5 DAVID ALBERTI
6 CHRISTINE K. CORBETT
7 YAKOV M. ZOLOTOREV
8 CARRIE L. WILLIAMSON

9 Attorneys for
10 Sun Microsystems, Inc.

11 Dated: May 23, 2008

12 WEIL, GOTSHAL & MANGES LLP

13 /s/ Jeffrey G. Homrig

14 MATTHEW D. POWERS
15 EDWARD R. REINES
16 JEFFREY G. HOMRIG
17 JILL J. HO

18 Attorneys for
19 NetApp, Inc.